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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1742 OF 2007

Kandivali Education Society,
A public Charitable Trust registered
under the Bombay Public Trust Act,
1950 under No.F/253/BOM with
Charity Commissioner Bombay region and
also registered under the
Societies Registration Act and
having its office at Shantilal Modi Road,
Kandivali (W),
Mumbai-400 067. ....Appellants.

Vs.

1. Joint Charity Commissioner,
   Office of the Charity Commissioner,
   Mumbai Region, Dr. A.B.Road,
   Worli, Mumbai-400 025.

2. Mr.Mayur Devji Bhimijiani,
   residing at Dharam Palace Hughes
   Road, 4th Floor, C wing,
   Mumbai-400 007.

3. Mr. Krishnakant Devjibhai Bhimjiani,
   residing at Dharam Palace Hughes Road,
   4th Floor, C Wing,
   Mumbai-400 007.

4. Mr. Ashokbhai Ramjibhai Radadia,
   residing at Opp. Rajiv Apts.,
   Kanakia Plot, Jetpur-360370,
   Gujarat.

5. Ms. Pratima Dineshbhai Mulani,
   residing Mulani Optical Company,
   4th Block, Jaynagar, Opp. Nilgiris,
   Bangalore. ..Respondents.

Mr. V.B.Naik i/by Mr. I.R.Joshi and Co. for the appellants.

Mr. S.N.Gawade, AGP for respondent No.1.

Mr. Rajendra Mishra i/by Mr. B.S.Wadhwa for respondent Nos. 2 to 5.

CORAM : ANOOP V. MOHTA,J.

DATED : 18th September, 2007

P.C.

1. In this appeal, the appellants aggrieved by the order/judgment dated 07/02/2007 passed by the Joint Charity Commissioner, Greater Mumbai Region, Mumbai under Section 47 of the Bombay Public Trusts Act, 1950 (for short, "BPT Act"); have preferred the present appeal basically on the ground of non consideration of their alleged objection dated 23/09/2005 and also on the ground of breach of principal of natural justice.

2. By the impugned order the Joint Charity Commissioner, Mumbai has appointed four persons in the Board of Trustees of "Devji Bhimji and Hemkunwar Devji Bhimji Arogya Bhavan" and further directed them to submit change report within 30 days. It is further ordered that the trust’s property to vest in newly appointed trustees.

3. There is no dispute that all the initially appointed turstees passed away. There is no one to look after the affairs of the trusts and therefore, application under Section 47 of the Act for the appointment as trustees. The Joint Charity

Commissioner has dealt with the raised objection in para 3 which is reproduced as under:-

"3. It may not be out of place to mention here that the original trustees had filed S.C.Suit No. 1824/77 in the City Civil Court at Bombay. The said suit was for de-registration of "The Devji Bhimjiani and Smt. Hemkuvar Arogya Bhuvan". It was prayed in the said suit that the property i.e. Sanatorium consisting of two double rooms, one kitchen, one bathroom situated on plot No.13 at Devji Bhimji Street, Kandivali (W) was to be transferred to another trust by the name Kandivali Education society and on transfer of the above said property, Devji Bhimji Charitable Trust was to be de-registered. In the said suit, Devji Bhimji Charitable Trust and Kandivali Education Society filed consent terms and decree accordingly was passed by the City Civil Court, Bombay, certified copy of the Decree dated 03/08/1977 is produced alongwith the application.

3. It is, however, submitted by the applicants that the said conditional decree is not acted upon till yet and "The Devji Bhimjiani and Smt. Hemkuvar Arogya Bhuvan" never transferred the above said property to

Kandivali Education Society. For non-fulfillment of that condition, it is contended that "The Devji Bhimjiani and Smt. Hemkuvar Arogya Bhuvan" could not be de-registered."

4. The submission, therefore, the objections were not considered has no substance. Before passing the order the Joint Charity Commissioner has given full opportunity to object to the appellant. The property being trust property. It is appropriate and necessary to appoint trustees to look after for the trust and its property. As there were no founder trustees alive and therefore, after considering the merits all these four persons as recorded in para 4 of the impugned judgment, the Joint Charity Commissioner has, appointed the Board of Trustees in question.

5. After considering the bio-data and antecedents of all these respective newly appointed trustees and in absence of any allegations of malafide contra material on record, there is no case made out by the appellant to interfere in the same.

6. The roznama of the application also shows that the intervenor’s objection appearing, have been given full

opportunity to make their submissions. All points as agitated including the objection to dismissing their application having once considered, the submission of even breach of principal of natural justice is of no consequences. The application filed by for appointment of trustees was also considered and the present trustees have been appointed. It is difficult to accept the submission that there is no application of mind by the Joint Charity Commissioner, while passing the order.

7. The entitlement of the appellant in respect of the trust property as recorded was subject to compliance of various conditions agreed between the parties and as observed that there is no compliance/conditions. The rights as claimed by the appellant based on the order dated 03/08/1977 passed in Civil Suit No. 1824 of 1977 in no way the reason to reject the application for appointment of trustees, specially when inspite of the order, there was no compliance made and admittedly the all ex- founder trustees expired. The trust property, therefore just need to be looked into by the trustees and therefore, I am of the view that the order as passed is within the framework of law on the record.

8. In the result, the appeal is dismissed.

(ANOOP V. MOHTA, J.)